

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 5/23/2013

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Conditional real estate sale agreement for East Clinton Elementary School

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Conditional Real Estate Sale Agreement between the City of Huntsville and Providence Community School, Incorporated d/b/a Providence Classical School.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head 

Date: 5-23-13

RESOLUTION NO. 13-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor is hereby authorized to execute an Agreement of Sale and Purchase of East Clinton Elementary School, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said document is substantially in words and figures similar to that certain document attached hereto and identified as a "Agreement of Sale and Purchase of East Clinton Elementary School between the City of Huntsville and Providence Community School d/b/a Providence Classical School, consisting of Eleven (11) pages, and the date of May 23, 2013 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 23rd day of May, 2013.

President of the City Council of
the City of Huntsville, Alabama

ADOPTED this the 23rd day of May, 2013.

Mayor of the City of
Huntsville, Alabama

**AGREEMENT OF SALE AND PURCHASE
OF EAST CLINTON ELEMENTARY SCHOOL**

This Agreement of Sale and Purchase of East Clinton Elementary School (this "Agreement") is made this ____ day of March, 2013 (provided, however, that the "Effective Date" shall be as set forth in Section 9(c)) between the City of Huntsville Alabama, a municipal corporation in the State of Alabama ("Seller") and Providence Community School, d/b/a Providence Classical School, an Alabama non-profit corporation ("Buyer").

RECITALS

A. The Huntsville City Board of Education, a political subdivision of the State of Alabama (the "BOE") is the owner of that certain tract or parcel of real property lying and being in the County of Madison (the "County"), State of Alabama (the "State"), known as 605 East Clinton Avenue, Huntsville, Alabama 35801, being identified by the County as Tax Parcel No 1407361005067000, PPIN 133890, and being all of the real property bounded by Clinton Avenue, White Street, Calhoun Street and the unnamed paved alley connecting White and Calhoun Streets, together with the buildings and improvements erected thereon (the "Real Property") and the Personalty and Intangible Property (if any), as those terms are hereinafter defined (hereinafter collectively the "Property").

B. Subject to the approval of the City of Huntsville (in its capacity as local governmental entity and not as Seller, the "City") Council, the Seller will purchase the Property from the BOE pursuant to that certain real estate sales contract dated on or about May __, 2013 (the "BOE Contract").

C. Seller desires to sell and Buyer desires to buy all of Seller's right, title and interest in and to the Property, less and except the below described retained easement (the "Retained Easement") upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the Recitals, which are incorporated herein, the respective covenants, representations and warranties hereinafter set forth and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **PURCHASE AND SALE**

(a) **Agreement of Sale and Purchase.** Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and take from Seller, all of Seller's right, title and interest in and to the following:

- (i) the Real Property;
- (ii) all personal property, apparatus and equipment owned by Seller and/or left in place by the BOE, together with any warranties, located on the Real Property and utilized in connection with the maintenance of the Real Property and the former operation of the school located on the Property (the "Personalty"); and
- (iii) any licenses, permits, and certificates of any governmental authorities required to be used in or relating to the ownership, use, maintenance, occupancy or operation of any part of the Real Property or Personalty (the "Intangible Property").

2. **PURCHASE PRICE AND PAYMENT THEREOF**

(a) **Purchase Price.** The purchase price to be paid by Buyer to Seller for Seller's interests in the Property is ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00) (the "Purchase Price"), and shall be paid as follows:

(i) TEN THOUSAND DOLLARS (\$10,000.00) (the "Initial Deposit") upon execution of this Agreement, payable to Seller, which shall be deposited in a non-segregated, non-interest bearing account and held in accordance with the provisions set forth below.

President of the City Council of the
City of Huntsville, Alabama
Date: _____

(ii) The balance of this Purchase Price is to be paid at the Closing (as that term is hereinafter defined).

3. LIMITED REPRESENTATIONS BY SELLER; CONDITION OF PROPERTY

(a) Limited Representations. Buyer acknowledges and agrees that the Seller has limited knowledge regarding the Property and at this time does not have title to the same and can make no representation regarding the current state of the title and the Property.

(b) "As Is" Condition. Subject to its right to inspect as provided in Section 4 below, Buyer represents and agrees that it will inspect, examine and investigate to its full satisfaction, the Property and the uses thereof, that it will independently investigate, analyze and appraise the condition and value thereof and that it is purchasing the Property in its "AS IS, WITH ALL FAULTS" condition as of the Effective Date, subject to reasonable wear and tear of the same from the Effective Date until Closing. With respect to the foregoing, Seller makes no representations or warranties to Buyer, other than the warranty of title contained in the Deed, as that term is hereinafter defined, from Seller to Buyer, or as may be set forth in this Agreement, and Seller shall convey the Property to Buyer on an "AS IS, WITH ALL FAULTS" basis, without any warranty whatsoever as to its present physical condition or expenses of the Property. The parties acknowledge that the City may issue written documentation regarding the status of the Property, in its capacity as local governing authority, in connection with this transaction regarding zoning, fire safety, occupancy certificates and the like and that Buyer may rely on such written approvals, consents, authorizations in the normal course of business, independent from the terms of this Agreement.

4. INSPECTION OF PROPERTY

(a) Inspection by Buyer ("Buyer's Due Diligence").

(i) Buyer and Buyer's authorized agents and representatives may, from time to time, at Buyer's sole risk, cost and expense, prior to Closing, after reasonable prior notice, inspect the Property, and make such non-invasive tests, surveys, studies and inspections, and generally obtain such other information and data, as Buyer shall deem necessary or desirable, including, without limitation, non-invasive engineering studies. In this regard, Seller hereby agrees, within twenty (20) days following the date of the execution of this Agreement, to provide Buyer with the following items, to the extent any such items are in Seller's possession and have not been previously delivered to or obtained by Buyer: (i) a copy of the most recent environmental audit report with respect to the Property (the "Existing Environmental Report"); (ii) a copy of the most recent title report and/or commitment regarding the Property and copies of all title exception documents listed thereon. Buyer shall promptly deliver to Seller copies of any reports relating to any testing or other inspection of the Property performed by Buyer or its agents, employees or contractors.

(ii) Buyer agrees that it shall be liable for, and shall indemnify, defend and hold Seller harmless against, any and all damages, costs, expenses, liabilities or suits arising by reason of or related to such entry and/or conduct of tests, surveys and inspections, including attorneys' fees and the cost to repair and restore. Following the performance of any such tests, surveys, studies and inspections, Buyer shall restore the Property to its condition prior to the performance thereof, which restoration obligations shall survive the termination of this Agreement. Buyer shall promptly pay for all work performed by order of Buyer, its agents, representatives or contractors and shall cause any lien placed upon the Property in connection therewith to be promptly removed. All of the foregoing provisions of this Section shall expressly survive the termination of this Agreement.

(b) Due Diligence Information. Should the Closing not occur for any reason, Buyer shall immediately return to Seller the originals and all copies of any and all Confidential Information obtained by Buyer, whether or not obtained from Seller, its employees, agents, or attorneys, and Buyer shall provide Seller with all surveys, tests, reports, title examinations, and feasibility studies generated by or at the direction of Buyer relating to the Property, whether or not made in connection with the Inspections. Buyer's obligations under this Section shall survive any termination of this Agreement.

5. TITLE TO BE ACCEPTED BY BUYER; THE DEED

(a) Title. Seller does not make any representations, warranties or covenants concerning title to the Real

Property except that (i) after the Effective Date, Seller shall not execute any deed, easement, restriction, covenant or other matter affecting title to the Real Property unless Buyer has received a copy thereof and has expressly approved the same in writing, and (ii) all mortgages, deeds of trust and liens in a liquidated amount (except liens for ad valorem taxes and governmental assessments not yet due and payable) ("Seller Obligations") which shall be paid and discharged of record by Seller at or before Closing, and (iii) those matters encompassed by the Deed defined below.

(b) Deed. At the Closing, upon receipt by Seller of the Purchase Price and documents to be delivered to Seller as provided herein in the form required hereby, and upon Buyer complying with all of its other obligations hereunder, Seller shall deliver to Buyer a duly executed and acknowledged Statutory Warranty Deed (the "Deed"), as more specifically described in Section 14.1 hereof, to Seller's fee estate in the Real Property, which shall be in proper form for recording. The Deed shall be sufficient to convey to Buyer the Seller's estate and interest in and to the Real Property, subject to and in accordance with the provisions of this Agreement. At Closing Seller shall also deliver to Buyer an Assignment and Bill of Sale for all Personalty and Intangible Property, which may be in "quit claim" form (the "Bill of Sale").

(c) Costs. Buyer shall pay all Closing Costs relative to the Closing of the Property. For the purposes of this Agreement "Closing Costs" shall exclude Seller's attorney's fees and expenses of complying with the terms of this Agreement and the cost of preparing the Deed, Bill of Sale, and other documents required for Closing, along with the cost of curing title, including the recording costs of such curative title measures.

(d) Title Report and Survey

(i) Buyer shall procure a title insurance commitment (the "Title Commitment") for the Property from Wilmer & Lee, P.A. ("Title Agent"). Alternatively, Title Agent may request the Title Commitment be issued by the attorney for the BOA. Buyer may object to any item, exception or other matter shown on the Title Commitment that will materially affect Buyer's ability to own and operate the Property for its intended purpose other than the "Permitted Title Exceptions" (as such terms is hereinafter defined) (the "Title Objections"). Buyer shall notify Seller in writing of any Title Objection on or before the Due Diligence Date. With respect to the foregoing, Buyer and Seller hereby agree that the following items shall constitute "Permitted Title Exceptions", and shall in no event be deemed to constitute valid objections to title by Buyer: (i) all non-delinquent property taxes and assessments (and any caveats with respect thereto); (ii) all conditions, covenants, restrictions and easements of record which do not unreasonably interfere with the use of the Property as a private K-12 school; (the "Intended Use") (iii) general utility, sewer and drainage easements of record upon which the existing improvements to the Property do not encroach; (iv) zoning ordinances affecting said Property; and (vi) those certain title exceptions, if any, as may have been consented to and approved by Buyer as of the date of this Agreement, as listed and set forth on Schedule A attached hereto and made a part hereof. In addition, any exceptions to title with respect to which Buyer fails to object prior to the Due Diligence Date shall be deemed to have been expressly accepted by Buyer and shall thereafter constitute Permitted Title Exceptions hereunder. Within ten (10) days following Seller's receipt of Buyer's Title Objections, Seller shall notify Buyer in writing whether or not it shall cure any or all of the Title Objections ("Sellers' Cure Notice"). If Seller's Cure Notice indicates that Seller will not cure any or all of the Title Objections, then, subject to the limitations of Section 6, Buyer shall have the right to terminate this Agreement by delivery of written notice to Buyer and Broker within ten (10) days following Buyer's receipt of Seller's Cure Notice. Unless Buyer shall elect to terminate this Agreement by notifying Seller in writing of its election to so terminate within ten (10) days of its receipt of Seller's Cure Notice as referenced in the preceding sentence, such Title Objections that Seller has notified Buyer that it will not cure shall also be deemed to be Permitted Title Exceptions for purposes of this Agreement. Notwithstanding the foregoing, Buyer may object to any matters of title which are reflected in any updated Title Commitment obtained by Buyer prior to Closing but that were not reflected in the initial Title Commitment by delivery of written notice to Seller within five (5) days following the receipt of any such updated Title Commitment. The parties shall thereafter have the same rights and obligations and will be subject to the same time periods as are provided for above with respect to the original Title Objections and the date of Closing shall be extended, as necessary, to accommodate such additional time periods. Seller shall use reasonable, good faith efforts to cure any Title Objections Seller has agreed to cure on or before the date of Closing. If Seller shall have failed to cure all Title Objections which Seller has agreed to cure within the time allowed by this Section, then Buyer, at its option exercised by written notice to Seller, may: (a) waive such Title Objections and proceed to close the purchase and sale of the Property without reduction in the Purchase Price; or (b) extend the date of Closing by up to thirty (30) days to allow Seller to cure such Title Objections. Seller shall have no obligation to cure any Title Objections, except as otherwise provided in this Agreement. If at any time following delivery of Seller's Cure Notice, Seller notifies Buyer that Seller does not intend to attempt to cure any Title Objection, or if, having commenced attempts to cure any Title Objection, Seller later notifies Buyer that despite utilizing all reasonable efforts, Seller will be unable to effect a cure

thereof, Buyer shall, within ten (10) days after such notice has been given, notify Seller in writing whether Buyer shall elect to accept the conveyance of the Property subject to such Title Objection or to terminate this Agreement pursuant to Section 4. If Seller fails to respond within such ten (10) day period, Buyer shall be conclusively deemed to have accepted the conveyance of the Property subject to such Title Objections. If this Agreement is terminated pursuant to this Section 4, both parties shall be released from all liabilities and obligations under this Agreement that do not expressly survive the termination hereof and Broker shall refund the Deposit to Buyer.

(ii) Buyer may cause, at its expense, a survey (or update of any previous survey provided by Seller) to be conducted of the Property by a land surveyor duly registered under the laws of the State of Alabama (the "Survey"). If the Survey reveals any matters that would materially affect Buyer's ability to own or operate the Property for its intended purpose, then Buyer shall have those rights and remedies and shall be subject to the provisions of Section 6 and subject to the same time periods regarding rights of objection with respect hereto as are set forth regarding Title Objections in this Section.

6. **BUYER'S TERMINATION RIGHT** Buyer may disapprove of the results of any such inspection, inquiry or investigation, including the Title Commitment or Survey, for any reason or for no reason and any disapproval thereof need not specify the reason for such disapproval. Buyer shall have the right to terminate this Agreement if Buyer, in its sole discretion, deems the Property or any aspect thereof, or any instrument or the result of any inquiry or investigation, to be unsatisfactory in any way or for any reason whatsoever; provided, however, that Buyer may only exercise such right by giving Seller written notice of such termination on or before sixty (60) days after the Effective Date of this Agreement (the "Due Diligence Date"). If Buyer fails to terminate the Agreement pursuant to this paragraph, this Agreement shall be in full force and effect and, subject to the provisions of this Agreement, Buyer shall accept the Property in its "AS IS" condition, except for Title Objections as provided above unless the contingencies set forth in Section 9 are not met. Buyer shall be responsible for all expenses incurred by Buyer in connection with its investigation of the Property.

7. **CLOSING** The closing of the transaction contemplated hereby (the "Closing") shall take place at the offices of Title Agent thirty days after the Due Diligence Date, or such other time (i) as may be agreed upon by the parties or (ii) as may be set forth in this Agreement in any provision providing for an extension of the date of Closing. However, if the contingencies set forth in Section 9 have not been met by the above established Closing date, then the Closing shall be continued for up to 60 days in order to have the contingencies satisfied. Any additional extensions of the Closing date require the parties mutual consent.

8. **REPRESENTATIONS AND WARRANTIES**

(a) **Sellers Warranties and Representations.** Seller warrants and represents to Buyer that as of the Effective Date:

(i) **Authorization.** The individual executing this Agreement on behalf of Seller is duly authorized to execute this Agreement on behalf of Seller. The execution and delivery of this Agreement and the performance of all obligations of Seller hereunder have been duly authorized by all entity action of Seller and no consents of any other persons are required that have not been obtained for the execution and delivery of this Agreement by Seller and the performance of all obligations of Seller hereunder.

(ii) **No Conflicting Agreements.** The transfer and delivery by Seller of the Property to Buyer as provided hereunder and the performance by Seller of its obligations under this Agreement will not conflict with or result in the breach of any of the terms of any agreement or instrument to which Seller is a party or bound or constitute a default thereunder.

9. **CONDITIONS PRECEDENT TO BUYER'S AND SELLER'S CLOSING OBLIGATIONS**

(a) **Seller's Compliance.** The obligations of Buyer to purchase the Property from Seller and to perform the other covenants and obligations to be performed by Buyer on the Closing shall be subject to the following conditions (all or any of which are for the sole benefit of Buyer and may be waived in writing, in whole or in part by Buyer):

(i) **Representations and Warranties True.** The representations and warranties made by Seller under Section 7 of this Agreement shall be true and correct in all respects on the date of this Agreement and shall be true and correct in all respects on and as of the Due Diligence Date and the date of Closing.

(ii) **Seller's Performance.** Seller shall have performed all material covenants, agreements and delivered all documents required by this Agreement to be performed or delivered by it on or before the time of Closing.

(iii) **Title to Property.** On the date of Closing, the Title Company shall be unconditionally obligated and prepared, subject to the payment of the applicable title insurance premium and other related charges, to issue to Buyer full coverage owner's title insurance policies (2006 ALTA form) respecting the Property in the amount of the Purchase Price, subject only to the provisions of Section 4(a)(2) and the Permitted Exceptions and customary exceptions and exclusions contained in such policies.

(iv) **Government Approvals.** Buyer must receive all necessary and appropriate approvals, waivers and certificates of occupancy from the relevant Governmental Authorities for the opening, relocation and operation of the Property for the Intended Use and associated parking as may be required by the City's Inspection and Planning Departments without the requirement to upgrade the facilities to meet the City's current Building Code, or any similar regulations, other than to pave such parking areas as may be permitted by the Historical Commission (defined below). For purposes of this Agreement, "**Governmental Authorities**" shall include, but not be limited to, the City Inspection Department ("**Inspection**"), the City Planning Department ("**Planning**"), the City Fire Marshall and any County or State Fire Marshall (collectively the "**Fire Marshall**"), the Huntsville Historical Preservation Commission (the "**Historical Commission**"), the City Board of Zoning Adjustment ("**Board of Adjustment**") and any other regulatory body of the State, County or City that has authority over the use and operation of the facilities of the Property for the Intended Use. Specifically, this Agreement is contingent upon the Board of Adjustment granting Buyer a use variance for the Intended Use; that no material Property modifications are required by any Fire Marshall, Inspection and/or Planning in order for Buyer to obtain a Certificate of Occupancy, without condition, for the existing school facilities to be used for the Intended Use; permission for Buyer to install paved parking in compliance with the City zoning code (as determined by Planning) from the Historical Commission, and/or a ruling by the Board of Adjustment to allow Buyer to open and operate the Property for the Intended Use with only such paved parking as the Historical Commission will allow to be installed on the Property. Any reference to the improper Governmental Authority, or department, shall be deemed to mean the appropriate Governmental Authority, sub-department or subcommittee.

(b) **Buyer's Compliance.** The obligations of Seller to sell the Property to Buyer shall be subject to the following conditions (all or any of which may be waived in writing, in whole or in part by Seller):

(i) **Representations and Warranties True.** The representations and warranties made by Buyer under this Agreement shall be true and correct in all respects on the date of this Agreement and shall be true and correct in all respects on and as of the time of Closing with the same force and effect as if such representations and warranties had been made on and as of the Closing.

(ii) **Buyer's Performance.** Buyer shall have performed all material covenants, agreements and delivered all documents required by this Agreement to be performed or delivered by it on or before the time of Closing.

(c) **Mutual Contingency.** The parties acknowledge that this Agreement is contingent upon Seller obtaining title to the Property from the BOE.

10. **FAILURE TO CONDITIONS PRECEDENT** Subject to the terms of the immediately succeeding sentence, in the event that all conditions precedent for Closing as specified in **Section 9** are not fulfilled at the time of the Closing (as the same may be extended by written agreement of Seller and Buyer) regardless of whether or not the Buyer terminated the Agreement prior to the Due Diligence Date, the Broker shall return all of Buyer's Deposit to Buyer and this Agreement shall be terminated.

11. **RISK OF LOSS; CONDEMNATION**

(a) **Risk of Loss.** Seller shall bear all risk of loss to the Property until Closing except as otherwise expressly provided for in this Agreement and except for such loss as may be otherwise occasioned by the negligence or willful misconduct of Buyer or any of Buyer's officers, employees, agents or contractors.

(b) **Condemnation.**

(i) If all or a material part of the Property is taken by condemnation, eminent domain or by agreement in lieu thereof, Buyer may either terminate this Agreement (in which event Buyer shall be entitled to a return of the Deposit and accrued interest thereon, if any, and, except as otherwise set forth in this Agreement, all obligations of the parties hereto shall cease and this Agreement shall terminate) or close title to the Property in accordance with the terms hereof, without reduction in the Purchase Price, together with an assignment of Seller's rights to any award paid or payable by or on behalf of the condemning authority attributable to the Property, less any amounts reasonably expended by the Seller with respect to such condemnation proceedings or the repair or restoration of the Property on account of such condemnation. If Seller has received payments from the condemning authority attributable to the Property and if Buyer elects to close title to the Property, Seller shall credit the amount of said payment against the Purchase Price at the Closing.

(ii) If a non-material part of the Property is taken by condemnation, eminent domain or by agreement in lieu thereof, the transaction contemplated hereby shall close in accordance with the terms hereof, without reduction in the Purchase Price, but together with an assignment of Seller's rights to any award paid or payable by or on behalf of the condemning authority. By way of example, a condemnation of a portion of the Property (exclusive of the primary building(s) located thereon) in connection with the widening of any adjacent roads, which does not materially impair the available parking or vehicular or pedestrian ingress or egress therefrom, would be "non-material".

12. RETAINED EASEMENT AND RIGHT OF FIRST REFUSAL

(a) Greenspace Easement.

(i) Seller shall retain that portion of the Property as described in attached Exhibit A (the "Retained Easement") for use as a green space recreational easement for the public to enjoy when Buyer is not in session for school or utilizing the Property for an official, scheduled school function. Buyer shall be responsible to maintain the lawn in the Retained Easement by keeping the grass mowed and keeping it free of litter.

(ii) Seller shall retain the right, but not the obligation, to install customary and appropriate playground equipment on that portion of the Retained Easement located within the interior boundary Track (defined in Exhibit "A"). Maintenance on any such equipment, and decision to remove the same, shall be at Seller's discretion.

(b) Right of First Refusal/Option. As a material consideration to Seller entering into this Agreement, the receipt and sufficiency of which is hereby acknowledged by the parties, at Closing Buyer agrees to grant to Seller, in perpetuity, a first right of refusal and option to purchase the Property, or any portion thereof on the terms and conditions hereinafter set forth in the event Buyer elects to sell the Property or permanently discontinues operation of the Property for the Intended Use.

(c) Notice of Sale. Buyer must provide Seller written notice at the address set forth above of its receipt of a bona fide contract to purchase the Property, or any portion thereof, that Buyer is willing to accept. Seller shall notify Buyer of whether or not it elects to exercise its first right of refusal within 30 days from the date of actual notification. In the event that the contract is only for a portion of the Property and Seller elects not to purchase that portion of the Property, the Seller still, nonetheless, shall have a right of first refusal over the balance of the Property. In the event Buyer permanently discontinues use of the Property for its Intended Use, then it must provide 60 days written notice, along with evidence of the cost of permanent improvements to the Property made by Buyer, to the Seller and Seller shall have the right and option during said 60 day period to repurchase the Property for the Purchase Price for this transaction, plus the cost of permanent improvements made by the Buyer. In the event Seller elects not to exercise its option to purchase the Property, the Seller still, nonetheless, shall retain its right of first refusal over the Property

(d) Mortgage. It is understood and agreed that the provisions of this Agreement shall be subordinate and inferior to any purchase money mortgage, improvement mortgage and/or any mortgage securing a refinancing of a previous mortgage. The Property shall be conveyed by statutory warranty deed, free and clear of any and all liens, except as set out above.

(e) No Obligation to Purchase. Nothing in this Agreement is intended or shall operate to require Seller to repurchase the Property.

(f) Closing. The deed to the Property shall be delivered, and the sale closed at the office of Title Agent or in

such other place as the parties may mutually agree 30 days after Seller notifies Buyer of its intention to exercise its rights under this section of the Agreement.

13. **BROKERAGE** Each of the parties represents to the other that it has not retained or used the services of a broker or agent in connection with this transaction. Buyer and Seller each hereby agree to indemnify, defend and hold the other harmless from any and all claims for payment, costs, charges or other damages (including reasonable attorney's fees) by any retained brokers.

14. **PROVISIONS WITH RESPECT TO CLOSING**

(a) At Closing, Seller shall deliver to Buyer the following:

(i) **Deed.** A duly executed Statutory Warranty Deed, in form acceptable for recording, which Deed shall be of the kind and of the type customarily used for commercial real estate transactions in the state in which the property is located, conveying all right, title and interest in and to the Real Property and warranting said title against the claims of all persons and parties owning, holding or claiming by, through or under Seller, subject only to the Permitted Exceptions.

(ii) **Transfer Tax Declaration Form.** A duly executed Real Estate Transfer Tax Declaration Form, if required by the State of Alabama, for the recording of the Deed.

(iii) A quit-claim bill of sale duly executed and acknowledged by Seller conveying its interest in the Personalty, if any, to Buyer.

(iv) **Assignment of Intangible Property.** An assignment of Seller's right under the assignable licenses and permits relating to the Intangible Property, if any, together with original copies or duly executed counterparts thereof, provided however that if any such agreement requires the approval of the other party thereto or the issuer thereof prior to assignment thereof to a third party, then Seller shall use reasonable efforts to obtain such approvals.

(v) **Title Insurance.** Any and all affidavits and other instruments and documents which the Title Agent shall reasonably require in order to insure Buyer's title to the Property.

(vi) **Keys.** All keys to the Property which are in Seller's possession.

(vii) **Plans and Specifications.** A complete set of the architectural, structural, mechanical and electrical plans and specifications for the Property to the extent in Seller's possession.

(viii) **Other.** Such other and further documents and instruments as may be reasonably required to consummate the transactions herein contemplated.

(b) At Closing, Buyer shall deliver to Seller the following:

(i) **Balance of Purchase Price.** The balance of the Purchase Price.

(ii) **Transfer Tax Declaration Form.** A duly executed Real Estate Transfer Tax Declaration Form for the recording of the Deed.

(iii) **Other.** Such other and further documents and instruments as may be reasonably required to consummate the transactions herein contemplated.

15. **PRORATIONS**

(a) Intentionally omitted

16. **LIQUIDATED DAMAGES; SELLER'S LIABILITY**

(a) Default by Buyer.

(i) The parties agree that if Buyer defaults under this Agreement, the damages which Seller will sustain as a result thereof will be substantial, but will be difficult, if not impossible, to ascertain.

(ii) The parties therefore agree that if Buyer defaults under this Agreement, Seller shall be entitled to terminate this Agreement, in which event all obligations hereunder (except those which specifically are to survive a termination of this Agreement) shall be deemed null and void, and Broker shall immediately deliver the Deposit, together with all interest earned thereon, to Seller as liquidated damages, to recompense Seller for time spent, labor and services performed, and loss of its bargain, and such liquidated damages are hereby agreed to constitute an accurate estimate of the damages reasonably anticipated to be incurred by Seller in the event of any such default by Buyer.

(b) Default by Seller. Upon a material default by Seller under this Agreement, Purchaser, as its sole and exclusive remedies, may elect to either: (a) receive a return of the Deposit and all interest, if any, earned thereon; or (b) institute proceedings in any court of competent jurisdiction to specifically enforce the performance by Seller of the terms of this Agreement.

17. NOTICES

(a) Notices. All notices, demands, requests or other communications required or permitted under the terms of this instrument shall be in writing and, unless and until otherwise specified in a written notice by the party to whom notice is intended to be given, shall be sent to the parties at the respective addresses:

If intended for Seller:

Peter Joffrion
City Attorney
308 Fountain Circle
Huntsville, Alabama 35801

If intended for Buyer:

Pattie Steward
Providence Classical School
1705 Sparkman Drive NW
Huntsville, Alabama 35816
(256) 852-8884

With Copy to:

Samuel H. Givhan
Wilmer & Lee, P.A.
100 Washington Street
Huntsville, Alabama 35801
(256) 533-0202

(b) Delivery. Each such notice, demand, request or other communication may be given on behalf of any party by its legal counsel, and shall be deemed to have been properly served for all purposes if (a) hand delivered against a written receipt of delivery, or (b) mailed by registered or certified mail of the United States Postal Service, return receipt requested, postage paid, or (c) delivered to a nationally recognized overnight courier service for next postage prepaid business day delivery, to its addressee at the address set forth in the Section immediately above, or (d) delivered via telecopier or facsimile transmission to the facsimile number listed in the Section immediately above, provided, however that if such communication is given via telecopier or facsimile transmission, an original counterpart of such communication shall concurrently be sent in any manner specified in clauses (a), (b) or (c) of this Section.

(c) Receipt. Each such notice, demand, request or other communication shall be deemed to have been received by its addressee upon the earlier of (i) the date of actual receipt or refusal by the addressee to accept receipt, unless such notice, demand, request or other communication arrived on a non-business day or after 3:00p.m. (EST) on any business day, in which case such notice, demand, request or other communication shall be deemed to have been received on the next business day or (ii) three (3) days following the deposit of any such notice in the United States mail; or (iii) one (1) day following the deposit of any such notice with a nationally recognized overnight courier service.

18. COUNSEL ACKNOWLEDGMENT

The parties acknowledge that the Buyer's counsel, SAMUEL H. GIVHAN, and the law firm of Wilmer & Lee, P.A. (collectively "Counsel") prepared this Agreement, *pro bono*, on behalf of and in the course of their representation of the Buyer. Counsel routinely represents Seller in various matters which are not adverse to Buyer and unrelated to closing. For the purposes of this transaction, Counsel represents the Buyer's interest and no other interests. All conflicts of interest due to Counsel's representation of Buyer and unrelated representation of the Seller are hereby waived.

19. MISCELLANEOUS

(a) Discharge of Seller's Obligation. The delivery of the Deed by Seller, and the acceptance thereof by Buyer, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except for any obligations specifically stated to survive the Closing or delivery of the Deed.

(b) Pronouns; Joint and Several Liability. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the parties may require. If the Buyer consists of two or more parties, the liability of such parties shall be joint and several.

(c) Inure and Benefit. The provisions of this Agreement shall inure to the benefit of the Seller and its successors and assigns, and shall bind and inure to the benefit of Buyer and its permitted successors and assigns.

(d) No Recording. The parties agree that neither this Agreement nor any memorandum or notice hereof shall be recorded.

(e) Counterparts; Captions; Date of Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original. The captions are for convenience of reference only.

(f) Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with, the laws of the State of Alabama, without regard to its provisions for conflicts of law.

(g) Entire Agreement. This Agreement (including any recitals, Schedules and Exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous representations, statements, understandings, and agreements, oral or written, between the parties, if any, with respect thereto. Buyer enters into this Agreement after full investigation, without relying upon any statements or representations, if any, not embodied in this Agreement. This Agreement may not be modified, changed or supplemented, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein and then only to the extent set forth in said written instrument. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto. The provisions of this Section shall survive the Closing.

(h) Waivers; Extensions. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any other obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

(i) Negotiated Agreement. This Agreement is a negotiated agreement, each of the parties hereto being represented by legal counsel. This Agreement shall not be construed against either party by reason of same being prepared by

its respective attorneys.

(j) **No Survival.** Except for the warranties in the deed and the provisions set forth in Section 4 of this Agreement, to the extent specifically stated herein to the contrary, the representations and warranties of Seller set forth in this Agreement shall not survive the date of Closing.

(k) **Limitation of Liability.** The parties expressly agree that the obligations and liabilities of Seller under this Agreement and any document referenced herein shall not constitute personal obligations of the officers, directors, employees, agents, affiliates, members, representatives, and other principles and representatives of Seller or Buyer. Notwithstanding anything to the contrary, Seller's liability, if any, arising in connection with this Agreement or with the Property shall be limited to the Purchase Price set forth herein. The limitations of liability contained in this section shall apply equally and inure to the benefit of Seller's and Buyer's present and future officers, directors, members, trustees, representatives, agents and employees, and their respective heirs, successors and assigns.

(l) **Time of the Essence.** Time shall be of the essence with respect to each provision of this Agreement requiring performance by either of the parties hereto by a specified date or time.

Signatures on following page(s).

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first written above.

WITNESS or ATTEST

SELLER:

The City of Huntsville, Alabama

By: _____
Tommy Battle, Mayor

Attest: _____
Charles Hagood, Clerk Treasurer

Date: _____

BUYER:

PROVIDENCE COMMUNITY SCHOOL

Date: _____

By: _____
Name: Stacy Steward
Its: President

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 5/23/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Providence Classical School

Document Name: Real Estate Agreement for Providence Classical School

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

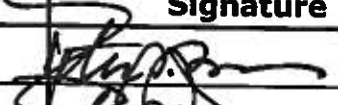
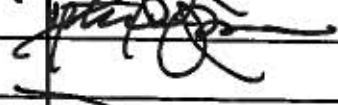

Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		<u>5-23-13</u>
2) Legal		<u>5-23-13</u>
3) Finance		
4) Originating		<u>5-23-13</u>
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		